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UNCLAS SECTION 01 OF 03 BRUSSELS 004619

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E.O. 12958: N/A

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SUBJECT: NEW EU PROGRAM FOR FREEDOM, SECURITY AND
JUSTICE TO BE ENDORSED BY LEADERS ON NOV 5

REF: USEU BRUSSELS 3101

SUMMARY

1. EU Ministers for Justice and Home Affairs (JHA) on October 25 reached broad agreement on a new multi-annual program for strengthening freedom, security and justice in the EU for the next five years. The prevention and repression of terrorism will be a key element of the plan, which provides for an "innovative approach" to the cross-border exchange of law-enforcement information, to be governed, under certain conditions, by the "principle of availability." The plan will be endorsed at the November 4-5 European Council, when EU leaders will be called to decide whether the Council should move to qualified-majority voting and co-decision with the European Parliament for all asylum and migration decisions by April 1, 2005. The Dutch Presidency draft provides for the establishment of a Common European Asylum System by 2010. A rapid reaction force of national experts to assist with the control and surveillance of the EU external borders could "ultimately be converted into a European corps of border guards." The draft also provides for minimum standards for national identity cards and for further development of judicial cooperation in criminal and civil law matters. END SUMMARY.

2. The October 25 JHA Council completed its preparations for a new multi-annual program of EU measures to strengthen "justice, security and freedom" in the Union. The plan, based on discussions at the September 30 - October 1 informal JHA in The Hague/Scheveningen, will be endorsed as the so-called "The Hague program" at the European Council meeting on November 4-5. Dutch officials said EU leaders would have to solve persisting differences on further moves from unanimity for Council decisions in JHA matters. The Dutch draft contains language requiring a switch to qualified-majority voting (QMV) and co-decision with the European Parliament for all asylum and migration policy measures by April 2005. The UK, Ireland and Denmark invoke a "legal exemption" (opt-out) to resist the proposal but other countries, including Germany, are said to be hesitant.

EXCHANGE OF INFORMATION AND COUNTER-TERRORISM

3. Speaking to the press, Dutch Justice Minister Donner and other Dutch officials described the new plan, which is building on the 1999 "Tampere program" of EU JHA activities, as both ambitious and practical. Donner highlighted the plan's provisions on the cross-border exchange of law-enforcement information as an "important step forward." The draft's section on "strengthening security" calls for an "innovative approach," saying cross-border exchange of law-enforcement information should be governed, under certain conditions, by the "principle of availability." The implication is that, effective January 2008, "a law enforcement officer in one Member State who needs information" to perform his duties "can obtain this from another Member State" and that the law enforcement agency in the other Member State that holds that information "will make it available for the stated purpose." Without prejudice to work in progress -- a reference to the draft Framework Decision on simplifying information and intelligence between law enforcement authorities of the EU Member States, the draft tasks the Commission to submit proposals by the end of 2005 for the implementation of the principle of availability. Spanish Interior Minister Alonso was particularly pleased, saying information would "flow directly, immediately and without obstacles when one country requests it from another." EU officials made it clear that other ministers failed to display the same enthusiasm.

14. Noting the "new urgency" arising of 9/11 and the 03/11/04 attacks in Madrid, the Dutch draft recognizes that EU citizens expect "a more effective, joint approach to cross-border problems" such as terrorism, organized crime, illegal migration and the smuggling of human beings. The prevention and repression of terrorism will be a key element of the new program and the common approach "should be based on the principle that preserving national security requires that full account is taken of the security of the Union as a whole." In Donner's words, "the security of one Member State contains the security of the other Member States" and "rules to protect public security in one country can also be used to protect public security in other countries."

15. The program calls for full implementation of the March 2004 EU Declaration and Action Plan on combating terrorism. Effective January 1, 2005, the SitCen located within the EU Council should provide "strategic analysis of the terrorist threat based on intelligence from Member States' intelligence and security services and, where appropriate, on information provided by EUROPOL." The Council and the EU CT Coordinator are tasked to develop, by the end of 2005, "a long-term strategy to address the factors which contribute to the radicalization and recruitment for terrorist activities."

TOWARD A COMMON EUROPEAN ASYLUM SYSTEM

16. The draft calls on the EU and its Member States to develop a "comprehensive approach" covering all stages of migration, from its root causes to entry, integration and return policies. The new phase in the establishment of a common EU policy in the field of asylum, migration and borders "should be based on solidarity and fair sharing of responsibility," including in "its financial implications." The aims of the Common European Asylum System will be the establishment of a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection. The Council and Commission should establish in 2005 "appropriate structures involving the national asylum services of the Member States with a view to facilitating practical cooperation." Following the establishment of a common asylum procedure by the end of 2010, these structures would be transformed into a European office "to assist all forms of cooperation between Member States relating to the Common European Asylum System." The draft further tasks the Commission to "look into the merits" and "feasibility of the joint processing of asylum applications outside EU territory." The EU will provide support for capacity building, border control and wider cooperation on migration issues to "those countries that demonstrate a genuine commitment to fulfill the obligations under the Geneva Convention on Refugees" (watered down from an earlier version that required countries to "keep their obligations" under the Convention).

17. The plan tasks the Council to establish teams of national experts to "provide rapid technical and operational assistance" to Member States for the control and surveillance of the EU external borders. The question of whether such teams of national experts can "ultimately be converted into a European corps of border guards" would be part of a 2007 review of the tasks of the European Agency for the management of cooperation at the EU external borders to be established on May 1, 2005. The leaders will also task the Council and Commission to draw up a plan in 2005 to develop "common standards, best practices and mechanisms to prevent and combat trafficking in human beings."

BIOMETRICS AND VISA POLICY

18. The draft calls on the Council, Commission and Member States to pursue their efforts to integrate biometric identifiers in travel documents, visas, residence permits, EU citizen's passports and information systems, and to prepare for the development of minimum standards for national identity cards. A common visa policy will be developed through further harmonization of national legislation and handling practices at local consular missions. Common visa offices would be established in the long term, taking account of discussions on the establishment of an EU external action service as envisaged under the EU Constitution. The draft tasks the Commission to submit in 2005 a proposal on

the establishment of common application centers and calls for the swift implementation of the Visa Information System (VIS) "starting with the incorporation of among others alphanumeric data and photographs by the end of 2006 and biometrics by the end of 2007 at the latest."

POLICE AND JUDICIAL COOPERATION

19. The program calls on the EU Member States to enable EUROPOL in cooperation with EUROJUST (EU Prosecutors' Office) to "play a key role in the fight against serious cross-border (organized) crime and terrorism by providing all necessary information to EUROPOL in good time." Member States are pressed to set up joint investigative teams. The Council and Commission will set up "within the existing structures an integrated EU crisis management arrangement for cross-border crises" to be implemented by July 1, 2006.

10. The program also calls for EU judicial cooperation in criminal and civil matters to be enhanced by "strengthening mutual trust" and the "progressive development of a European judicial culture." This should be achieved through exchange programs and the creation of a European training network for judicial authorities. The program calls for full completion of the program of EU measures to implement the principle of mutual recognition of judicial decisions in both criminal and civilian matters. The draft will refer to preparations for the establishment of a European Public Prosecutors' Office at EUROJUST, as provided under the EU Constitutional Treaty, but Donner said the exact wording on this controversial point remained subject to amendments. The Commission will be tasked to table legal instruments regarding family and succession law for completion by 2011.

EXTERNAL ASPECTS AND NEXT STEPS

11. The leaders will task the Council SG/HighRep to present to the Council, by the end of 2005, a strategy encompassing all external aspects of EU policy on freedom, security and justice. The strategy should reflect the EU's "special relations with third countries, groups and regions" but an earlier, more specific reference to relations with the U.S., Russia and the Balkans has been dropped from the text.

12. The new European Strategy on Drugs 2005-2012, to be adopted at the December 17-18 European Council, will be added to the multi-annual program. In adopting the Hague program next week, the EU leaders will task the Commission to present an Action Plan in 2005, in which the aims and priorities of the program will be translated into concrete actions, with a timetable for their adoption and implementation. The Commission will present to the Council an annual evaluation report ("scoreboard") on the implementation of the Hague program.

FAREWELL TO VITORINO

13. Outgoing JHA Commissioner Vitorino told his final Council press conference he fully backed the efforts of the Dutch Presidency to extend the use of QMV in JHA matters but cautioned this was "not a magic solution" as the EU would still have to overcome differences in the legal cultures of its individual Member States. Looking back to his five years in office, Vitorino assured that the EU had been able to maintain a "fair balance between justice, security and freedom." He expressed hope that the same equilibrium would be maintained in the implementation of the new program. Pressed to offer his advice to JHA Commissioner-designate Buttiglione, Vitorino said the Commission "should be part of the solution, not of the problem."

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